THE HON'BLE SRI JUSTICE J. CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE P. SWAROOP REDDY

W.P.No. 6624 and 6659 of 2007

Dated:16-04—2007

W.P.No. 6624 of 2007

Between:
The Director,
Directorate of Tobacco Development,
Ministry of Agriculture, New Delhi
And others.

..Petitioners.

and

G. Suryanarayana

..Respondent

W.P.No. 6659 of 2007

Between:
The Director,
Directorate of Tobacco Development,
Ministry of Agriculture, New Delhi
And others.

..Petitioners.

and

Smt. Janaki Devi and another.

…Respondents.

JC & PSR, JJ.

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W.P.No. 6624 and 6659 of 2007

Common Order:

(Per P. Swaroop Reddy, J.)

As both the writ petitions are connected and filed against the orders of the learned Central Administrative Tribunal, Hyderabad Bench, Hyderabad in O.A.Nos. 403 and 429 of 2003, respectively, both the matters are heard together and are being disposed of by this common order, at the admission stage. *For the sake of convenience the parties herein would be referred to as they are arrayed before the learned Tribunal.*

2. O.A.No. 403 of 2003, against which W.P.No. 6624 of 2007 is filed, was filed by the applicant, G. Suryanarayana, seeking declaration that he is entitled for first up gradation from 9.8.1999 in the scale of Rs.4500-125-7000 with consequential benefits, as per Assured Career Progression Scheme *(for brevity ACP)* vide D.O.P.T's OM No. 35034/1/ 97/ESTT(D) dated: 9.8.1999 by holding that the action of the respondents in granting him first up-gradation from 1.4.2001 instead of from 9.8.1999 as per Officer Order F.No.9-6/2002-Admn (CPS) dated: 30.8.2002 as illegal, arbitrary and violative of articles 14, 16 and 21 of the Constitution.

3) The case of the applicant is that first he was appointed as a Field Man on 1.8.1984 in the scale of Rs.260-400. As per ACP for the Central Government Employees introduced by 5th Pay Commission, Group-B,C, and D Category employees are entitled to two financial up gradations on completion of twelve and twenty four years regular service. In terms of the conditions stipulated therein, the first and second financial up gradation is allowed after

twelve and twenty four years of regular service, subject to there being stagnation. But though the applicant had completed eighteen years of unblemished service as on 9.8.1999, as he did not get any promotion, he is entitled for the first up-gradation with effect from 9.8.1999. His grievance is that he was granted the same from 1.4.2001 instead of 9.8.1999.

4. The case of the respondents, as per the counter, is that in accordance with the provisions of the Government of India, DOP T's OM.No.35034/1/97-1.Estt(D) dated:9.8.1999, the case of the applicant was considered and he was found fit for grant of first ACP with effect from 1.4.2001; that the financial up-gradation under the scheme was subject to fulfillment of normal promotion norms (Benchmark, departmental examinations etc.). The specific case of the respondents is that the Benchmark for promotion to and within Group 'C' & 'B' posts is 'Good', but, as per his Confidential Reports as on 9.8.1999, he could meet the Benchmark only on 1.4.2001 and as such his first financial up-gradation under ACP was granted to him only with effect from 1.4.2001. Thus the applicant was granted financial up-gradation in accordance with the instructions stipulated in the scheme dated: 9.8.1999 and there is no violation of Articles 14, 16 and 21 of the Constitution of India.

5. The applicant filed a rejoinder contending that the very contention of the respondents that he could not meet Benchmark 'Good' as on 9.8.1999 and could meet the same on 1.4.2001 show that he was classified below 'good' earlier to 9.8.1999, which adversely effected him in getting the financial up-gradation. The said ACRs cannot be taken into account, while considering his case for granting first financial up-gradation, since he was not

communicated the entry that he was graded below 'good' in ACR, which effected him adversely in getting first financial up-gradation.

6. O.A.No. 439 of 2003, against which W.P.No. 6659 of 2007 is filed, was filed by the applicant, Subrahamnya Sastri and another, raising similar contentions as in W.P.No. 6624 of 2007. As the first applicant, Subrahmanya Sastri died in the above O.A., his wife Janaki was brought on record, as a petitioner in his place. The grievance of the applicants in this O.A., is that they were appointed as Field-men on 19.11.1974 and 15.11.1974 respectively, in the time scale of Rs.260-400; as they have completed twenty five years of service as on 9.8.1999 both of them are entitled for ACPs, but they were granted first financial up-gradation with effect from 9.8.1999 and second financial up-gradation with effect from 1.4.2001 and 1.4.2002 respectively, on the ground that the Screening Committee for consideration of ACP benefits after scrutiny the performance as reflected from their ACR Dossiers could not find them fit for granting second financial up-gradation from 9.8.1999 and found them fit only from 1.4.2001 and 1.4.2002 respectively.

7. The other contentions and counter contentions of both sides are similar as is in W.P.No. 6624 of 2007.

8. The learned Tribunal relying on the Full Bench judgment of the Tribunal (Ernakulam Bench) in O.A.No.1304 of 2000 and in O.A.No. 523 of 1998 (Lucknow Bench), held that the adverse remarks recorded in ACRs cannot be taken into account unless they are communicated and denial of promotion on the basis of adverse remarks is not sustainable and that it is now settled position of law that un-communicated entries in one's ACR which is below the required Benchmark grading should not be given

cognizance and accordingly allowed the O.As.

9. The learned Tribunal has also relied on a decision of the Supreme Court in **U.P. Jal Nigam v. S.O.Atri**[1], wherein it was held that in case of 'average' grading or expunction of adverse entry given to the petitioner, which comes in the way of his promotion, the same shall be duly communicated to the petitioner or else the grading should not be counted for the purpose of DPC. Thus holding that un-communicated adverse remarks, which have come in the way of promotion, cannot be taken into consideration, allowed both the OAs.

10. Now the contention of the learned counsel for the appellants is that the order of the learned Tribunal is erroneous and in support of her contention, she relied on the decision of the Supreme Court in **Union of India v. Major Bahadur Singh**[2]**.** In this decision it is not at all held that un-communicated adverse remarks can be taken into consideration for the purpose of refusal of promotion. The facts in the above case are completely different, it was a case, where it was held that if an officer failed to show the desired improvement, in spite of caution, adverse remarks can be included in the CR, which is not the case, in the present case.

11. In view of all the above circumstances and in view of the fact that un-communicated adverse remarks were taken into consideration for denying the opportunity of giving ACP to the petitioners, we are of the opinion that there are absolutely no grounds to interfere with the findings recorded by the learned Central Administrative Tribunal and the writ petitions are accordingly liable to be dismissed.

12. In the result, both the writ petitions – W.P.No. 6624 and 6659 of 2007 are dismissed at the admission stage. No costs.

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J. CHELAMESWAR, J.

16-04-2007
***bvs**

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P. SWAROOP REDDY, J.

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[1] **1998 SCC (L&S) 1733**

[2] **2006 SCC (L&S) 959**